Metrod (M) Bhd v MGS Transport Sdn Bhd

HIGH COURT (MUAR) — CIVIL SUIT NO 23–9 OF 2009
UMI KALTHUM JC
4 JANUARY 2010

Civil Procedure — Striking out — Application to strike out writ and statement of claim — Theft of goods during transportation — Rights of plaintiff subrogated to insurer — Whether plaintiff party to transportation contract, which was basis of plaintiff's claim — Whether action against defendant should be struck off — Rules of the High Court 1980 O 18 r 19(1)(b), (c) & (d)

Metrod (M) Bhd ('the plaintiff') and Metrod (OFHC) Sdn Bhd ('Metrod OFHC') were two companies from the Metrod group of companies. The basis of the plaintiff's claim against the defendant was a transportation contract dated 16 March 2001, which the plaintiff allegedly entered into with the defendant. It was the plaintiff's case that under the terms of the transportation contract, the defendant had agreed to transport goods belonging to both the plaintiff and Metrod OFHC ('the goods') from Shah Alam to Johor Bahru via Muar. While the defendant's two lorries, which were employed in carrying the goods, were stationed at the defendant's premises in Muar the goods were stolen, thereby causing the plaintiff to suffer losses and damages. The plaintiff made a claim from its insurer for the theft during transportation and was compensated. The plaintiff then subrogated all its rights and remedies in respect of the goods insured to the insurer, and the latter filed a writ of summons and statement of claim against the defendant in the plaintiff's name. The defendant contended that the plaintiff did not have the locus standi to make any claim against it under the transportation contract because the parties to the said contract were Metrod OFHC and the defendant. The defendant thus applied by way of this present striking off application to strike off the plaintiff's writ of summons and statement of claim under O 18 r 19(1)(b), (c) or (d) of the Rules of the High Court 1980. The plaintiff maintained that the transportation contract was signed by the plaintiff and Metrod OFHC with the defendant and thus bound both Metrod companies and the defendant.

Held, allowing the defendant's application with costs:

(1) The transportation contract, which was in the form of a letter dated 16 March 2001, was printed on Metrod OFHC's letterhead and was addressed to the defendant. This letterhead carried the Metrod logo with the name and address of Metrod OFHC on top of the logo. The court found that the fact that this transportation contract was signed by a

representative of Metrod OFHC and a representative of the defendant was by itself enough to establish that the contract was only between Metrod OFHC and the defendant. It was this court's finding that the representative of Metrod OFHC had signed the contract only for Metrod OFHC and not for and on behalf of both the Metrod companies. In the circumstances it could not be presumed that the Metrod name and logo that appeared on the letterhead necessarily meant Metrod OFHC and the plaintiff. This line of argument went against the general principles of company law that a subsidiary company had a separate legal personality from its parent company and vice versa unless the corporate veil was lifted (see paras 10–11).

(2) Further cll 1 and 2 of the transportation contract reinforced the fact that the said contract was between Metrod OFHC and the defendant and did not include the plaintiff as a party. As such the plaintiff had no locus standi to institute this suit against the defendant as there was no privity of contract between the plaintiff and the defendant (see paras 12–13).

(3) Both parties had erroneously made reference to the adjuster's report to reinforce their respective positions (see para 14).

[Bahasa Malaysia summary

Metrod (M) Bhd ('plaintif') dan Metrod (OFHC) Sdn Bhd ('Metrod OFHC') adalah dua syarikat daripada kumpulan syarikat-syarikat Metrod. Asas tuntutan plaintif terhadap defendan adalah kontrak pengangkutan bertarikh 16 Mac 2001, yang mana plaintif dikatakan memasukinya bersama defendan. Ia adalah kes plaintif bahawa di bawah terma-terma kontrak pengangkutan, defendan telah bersetuju untuk mengangkut barang-barang kepunyaan kedua-dua plaintif dan Metrod OFHC ('barang-barang') dari Shah Alam ke Johor Bahru melalui Muar. Semasa dua lori defendan, yang digunakan untuk mengangkut barang-barang tersebut, berhenti di premis defendan di Muar, barang-barang tersebut dicuri, dengan itu menyebabkan plaintif mengalami kerugian dan kerosakan. Plaintif membuat tuntutan daripada syarikat insurans untuk kecurian tersebut semasa penghantaran dan diberi pampasan. Plaintif kemudiannya letakganti kesemua hak dan remedi-remedinya berkaitan barang-barang yang diinsuranskan kepada syarikat insurans, dan syarikat insurans memfailkan writ saman dan penyataan tuntutan terhadap defendan dalam nama plaintif. Defendan berhujah bahawa plaintif tidak mempunyai locus standi untuk membuat apa-apa tuntutan terhadapnya di bawah kontrak pengangkutan tersebut kerana pihak-pihak kepada kontrak tersebut adalah Metrod OFHC dan defendan. Defendan oleh itu memohon melalui permohonan pembatalan ini untuk membatalkan writ saman dan penyata tuntutan plaintif di bawah A 18 k 19(1)(b), (c) atau (d) Kaedah-Kaedah Mahkamah Tinggi 1980. Plaintif mengekalkan bahawa kontrak pengangkutan

ditandatangani oleh plaintif dan Metrod OFHC bersama defendan dan oleh itu mengikat kedua-dua syarikat Metrod dan defendan.

Diputuskan, membenarkan permohonan defendan dengan kos:

(1) Kontrak pengangkutan, yang mana adalah dalam bentuk surat bertarikh 16 Mac 2001, dicetak di atas kepala surat Metrod OFHC dan dialamatkan kepada defendan. Kepala surat ini membawa logo Metrod dengan nama dan alamat Metrod OFHC di bahagian atas logo. Mahkamah mendapati bahawa fakta kontrak pengangkutan ini ditandatangani oleh wakil Metrod OFHC dan wakil defendan dengan sendirinya cukup untuk membuktikan kontrak hanya di antara Metrod OFHC dan defendan. Ia adalah dapatan mahkamah bahawa wakil Metrod OFHC telah menandatangani kontrak tersebut hanya untuk Metrod OFHC dan bukan untuk atau bagi pihak kedua-dua syarikat Metrod. Dalam keadaan ini ia tidak dapat dianggap bahawa nama dan logo Metrod yang tertera di atas kepala surat perlu bermaksud Metrod OFHC dan plaintif. Baris hujahan ini melanggar prinsip-prinsip undang-undang syarikat bahawa syarikat subsidiari mempunyai personaliti undang-undang berasingan daripada syarikat induknya dan sebaliknya kecuali tabir korporat diselak (lihat perenggan 10–11).

(2) Selanjutnya klausa-klausa 1 dan 2 kontrak pengangkutan memperkukuhkan fakta bahawa kontrak tersebut adalah di antara Metrod OFHC dan defendan dan tidak termasuk plaintif sebagai pihak. Oleh itu plaintif tidak mempunyai locus standi untuk memulakan tindakan ini terhadap defendan memandangkan tidak terdapat priviti kontrak di antara plaintif dan defendan (lihat perenggan 12–13).

(3) Kedua-dua pihak telah secara salah membuat rujukan kepada laporan pelaras untuk memperkukuh kedudukan masing-masing (lihat perenggan 14).]

Notes

For cases on striking out generally, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 7425–7635.

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation [1993] 3 MLJ 36, SC (folld)

People's Insurance Co (M) Sdn Bhd v People's Insurance Co Ltd & Ors [1986] 1 MLJ 68 (refd)

Legislation referred to

Rules of the High Court 1980 O 18 r 19(1), O 18 r 19(1)(b), (c), (d)

Dazz RK Narayanan (Azam Lim & Pang) for the plaintiff.
Tan Koon Heo (KH TAN & CO) for the defendant.

Umi Kalthum JC:

THE APPLICATION

[1] The defendant applied (in encl (5)) under the court's existing jurisdiction and or under O 18 r 19(1)(b), (c) or (d) of the Rules of the High Court 1980 ('RHC') to strike off the plaintiff's writ of summons and statement of claim dated 29 April 2009 (in encl (2)).

[2] The grounds of the application are that the plaintiff's claim is scandalous, frivolous or vexatious; or an abuse of the process of the court, and therefore should be struck off.

BRIEF FACTS

[3] It was the contention of the plaintiff that the plaintiff, together with Metrod (OFHC) Sdn Bhd ('Metrod OFHC'), had used the services of the defendant for the transportation of goods, namely copper wires, belonging to both the plaintiff and Metrod OFHC. This arrangement was as provided in the transportation contract dated 16 March 2001 in exh TCH1 of the afidavit in support of the defendant's application affirmed by Teh Chin Hua on 3 June 2009 in encl 5A ('transportation contract').

[4] Whilst transporting the plaintiff's goods from Shah Alam to Johor Bahru in the defendant's lorries bearing registration Nos JDD 3678 T/J 4330 and WET 2716 T/W 3452 ('the said lorries') via Muar and whilst the said lorries were stationed at the defendant's premises in Muar, there was a robbery at the defendant's premises ('the said robbery') and the said goods were stolen from the said two lorries while the said goods were in the custody of the defendant (see paras 5 and 6 of the statement of claim). As a result of the said robbery, the plaintiff suffered losses and damages.

[5] The plaintiff made a claim for the losses suffered to its insurer Uni Asia General Insurance Bhd ('the insurer') and was compensated by the insurer. The plaintiff then signed the subrogation form dated 6 January 2004 (exh HWK1, the plaintiff's affidavit in reply two (2), encl 12), subrogating all its rights and remedies in respect of the subject matter insured in accordance with laws governing the contract of insurance. Hence, the writ of summons and the statement of claim were filed by the insurer in the plaintiffs name under the

insurer's right of subrogation.

THE DEFENDANT'S CASE

[6] The defendant contended that the plaintiff did not have the locus standi to make any claim against it under the transportation contract as the transportation contract was between the defendant and *Metrod (OFHC) Sdn Bhd* and not between the defendant and the plaintiff. This was further reinforced by the final report of the General Adjustment Expertise Sdn Bhd as exhibited in exh TCH2 of encl 5A ('the adjuster's report').

THE PLAINTIFF'S CASE

[7] The plaintiff contended that the transportation contract was between the defendant and 'Metrod', that is, Metrod (M) Bhd and Metrod (OFHC) Sdn Bhd. Reference was made to paras 1 and 2 of the transportation contract in support of this contention. Further, the plaintiff contended that the transportation contract was signed by Metrod (M) Bhd and Metrod (OFHC) Sdn Bhd with the defendant and thus bound both Metrod companies with the defendant.

[8] The plaintiff further referred to the adjuster's report in support of its contention, where it is stated that the plaintiff and Metrod OFHC are the insured under the insurance policy No KLCA3000010 ('said insurance policy').

DECISION

[9] It was not disputed by the plaintiff that the basis of its claim against the defendant was the transportation contract. In view of this, the court agrees with the submission of learned counsel for the defendant that the issue which this court has to decide is whether the transportation contract is between the plaintiff and the defendant. In order to decide on the issue, the court needs to peruse the contents of the transportation contract itself.

[10] The transportation contract is in a form of a letter dated 16 March 2001. It carries the logo and name 'Metrod' with the name of the company 'METROD (OFHC) SDN BHD (198472.W)' and its address printed on top of the logo as its letter head. The letter is addressed to 'MGS TAY TRANSPORTATION SDN. BHD.'. There is no dispute that 'MGS TAY TRANSPORTATION SDN. BHD.' is the defendant by the name of 'MGS TRANSPORTATION SDN. BHD.'. At the foot of the transportation contract, one Rajan Mittal had signed for 'METROD (OFHC) SDN. BHD' and one Tay Hwa Chuan had signed for 'MGS TAY TRANSPORT SDN.

BHD.'. On this alone, the court finds that the transportation contract is between 'Metrod (OFHC) Sdn. Bhd.' and the defendant.

[11] The court rejects the plaintiff's contention that the logo 'METROD' means it is 'Metrod (Malaysia) Berhad' *and* 'Metrod (OFHC) Sdn. Bhd.' and that therefore the transportation contract is between Metrod (M) Bhd and Metrod (OFHC) Sdn Bhd as one party and the defendant as the other party (see para 4, the plaintiff's affidavit in reply, encl 9). In the first place, other then the logo 'Metrod', nothing is provided in the transportation contract to the effect that 'Metrod' means 'Metrod (Malaysia) Berhad' *and* 'Metrod (OFHC) Sdn. Bhd.' On top of that, Rajan Mittal had signed the contract only for 'Metrod (OFHC) Sdn. Bhd.' and not for and on behalf of both said Metrod companies. Further, it cannot be presumed that the name 'Metrod' must necessarily mean 'Metrod (Malaysia) Berhad' *and* 'Metrod (OFHC) Sdn. Bhd', after all what if the Metrod group of companies has more than two companies in its group, who is to know then what number and which companies would come under this name. More importantly, this line of argument flies against the basic general principles of company law, which is, a subsidiary company has a separate legal personality from its parent company and vice versa, unless the 'corporate veil' is lifted for certain purposes (which is not in issue here) — see *People's Insurance Co (M) Sdn Bhd v People's Insurance Co Ltd & Ors* [1986] 1 MLJ 68.

[12] As both parties had referred to the body of the transportation contract to support their contentions, the court now looks at the provisions of the transportation contract to see whether the provisions can throw any further light on the issue. Clause 1 of the said contract provides as follows:

> *1 Location:*
>
> *The location of plants storing the copper products on behalf of Metrod (OFHC) Sdn Bhd will be as under: —*
>
> (i) METROD (MALAYSIA) BERHAD PLANT 'A' 2, SOLOK WAJA SATU, P.O.BOX 212, BUKIT RAJA INDUSTRIAL ESTATE 41720 KLANG, SELANGOR DARUL EHSAN
>
> (ii) METROD (MALAYSIA) BERHAD PLANT B' 3, LENGKUK KELULI 2 P.O.BOX 212, BUKIT RAJA PRIME INDUSTRIAL PARK 41720 KLANG, SELANGOR DARUL EHSAN.
>
> (Emphasis added.)

As clearly provided in the said cl 1, the reference to the plaintiff in this clause is only by way of the plaintiff storing the copper products on behalf of Metrod (OFHC) and from which 'location' the defendant is required to pick up the copper products for transportation to sites to be determined. Clause 2 further indicates this arrangement, where the transportation rates are determined, by

virtue of the column headed 'Transportation rates from Metrod/OFHC to:' and in paragraph (b), 'Transfer between Metrod and OFHC'. Therefore cll 1 and 2 of the transportation contract reinforce the fact that the said contract is between Metrod (OFHC) Sdn Bhd and the defendant and does not include the plaintiff as a party to it.

[13] The court therefore agrees with the submission of learned counsel for the defendant, that as the transportation contract is between Metrod (OFHC) and the defendant, the plaintiff has no locus standi to bring this suit against the defendant as there is no privity of contract between the plaintiff and the defendant.

[14] Both parties had, in the court's opinion, erroneously made reference to the adjuster's report in order to reinforce their respective positions. The plaintif argued that from the adjuster's report, it was clearly stated that the insured were 'Metrod (Malaysia) Bhd' and 'Metrod (OFHC) Sdn. Bhd.' and that the term 'Insured' in the said report therefore referred to both Metrod companies. Whilst the court agrees with the plaintiff's argument on this point vis the adjuster's report, save for one instance under the title 'Description of Business' where the 'Insured' means 'Metrod (OFHC) Sdn. Bhd.', the court cannot agree with the plaintiff's conclusion that the adjuster's report supports the plaintiff's argument that the transportation contract is between both Metrod companies and the defendant. It is trite to say that this is because distinction must be made between the transportation contract and the contract of insurance in the form of the insurance policy No KLCA3000010 taken out by both the Metrod companies with the insurer ('the insurance contract'). Both Metrod companies had entered into the insurance contract to insure against any losses (in this case) due to theft during transportation of the copper wires/rods. As the insurance contract has not been exhibited, suffice for the court to state that even if the insurance contract includes the plaintiff as a party to the insurance contract, it does not mean, and the court so finds, that the plaintiff is also a party to the transportation contract.

CONCLUSION

[15] In view of the above, and based on the authority of the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation* [1993] 3 MLJ 36, the court allows the defendant's application with costs at

RM4,000 as it finds this is a plain and obvious case to apply O 18 r 19(1) of the RHC where on the face of the case, the plaintiff's claim against the defendant is unsustainable.

Defendant's application allowed with costs.

Reported by Kohila Nesan